The motion was put and carried.

Clause 1 was put and carried.

Clause 2 was put and carried.

The Schedule was put and carried.

The Preamble was put and carried.

THE HON. SRI K. MADHAVA MENON :—" Sir, I move—

' *that the Bill be passed into law* '."

The motion was put and carried and the Bill was passed into law.

(3) THE MADRAS TOBACCO TAXATION OF SALES AND LICENSING (RE-ENACTING) BILL, 1948 (L.A. BILL NO. 12 OF 1948).

THE HON. SRI B. GOPALA REDDI :—" Sir, I move—

2-45 p.m. ' *that the Madras Tobacco Taxation of Sales and Licensing (Re-enacting) Bill, 1948 (L.A. Bill No. 12 of 1948)* [a] *as passed by the Legislative Assembly be taken into consideration at once.*'

" Sir, the hon. Members of the House might know that we had a Tobacco Taxation Bill enacted in 1939 under which we were taxing all the sales of tobacco. But in 1944 we entered into a sort of agreement with the Government of India that in lieu of Rs. 22 lakhs to be paid to us we would impose no taxation on tobacco goods. We repealed our original Act of 1939 because we entered into that sort of agreement. Now the present Bill seeks to repeal that repealing Bill of 1944 and to revive the old Act of 1939. Since we cannot immediately impose those duties on tobacco under the Act of 1939 we shall keep it in suspense for the time being so that whenever we want we may be enabled to re-impose those duties, because that agreement with the Government of India is still lasting. Now we have entered into negotiations with them and we are trying to persuade them to see that we get a fair deal. In their Central Excise duties which they are collecting they get nearly Rs. 300 lakhs. We want that at least 50 per cent of it should be given to our Province. For the time being we are getting only Rs. 22 lakhs. So, Sir, we do not know how these negotiations are going to develop and we do not know what our attitude will be hereafter. But this Bill will enable us to re-impose those tobacco duties if and when it is desired by us. For the time being the original Act of 1939 will be revived and will be kept in suspense under this Act. I therefore want that this Bill be taken into consideration at once."

* SRI B. BHIMA RAO :—" Sir, I want to say a few words with regard to the principles of this enactment. As you know we passed an Act in the year 1939 levying a tax on tobacco. And some time later the Central Legislature also passed a similar Act. The poor dealers and merchants who were trading in tobacco were subjected to enormous taxation by the Provincial Government as also the Central Government. They were being subjected to so

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[a] Printed as Appendix III on pages 203–204 infra.

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many difficulties that they made innumerable representations to this Government and to the Central Government. In some cases which I came to know in the course of my profession tobacco which was worth only Rs. 500 was subjected to a taxation of Rs. 1,500 and even more. When those representations were made to both the Governments, the Central Government intervened and said to the Provincial Government : ' You may just repeal your Act. We will give you some compensation.' At that time the Legislature was not functioning and they came to some arrangement. Now the present Government want to get a higher share. After all it is our own Government that is functioning in Delhi. It is not a bureaucratic Government and I think our leaders have got that capacity to persuade the Central Government to come to a reasonable settlement and increase it. But, Sir, this is not the way of reviving repealed and lapsed legislations and holding a Democle's sword over the Central Government.

" I should also like to submit this, Sir. I wish to refer to another provision which I believe will soon become law. That is Article 231 of the Draft Constitution of India framed by the Constituent Assembly. Sub-clause (1) says as follows : If any provision of law made by the Legislature of a State is repugnant to any provision of law made by Parliament which Parliament is competent to enact, or to any provision of any existing law regarding a matter with respect to which Parliament has power to make laws, then, subject to the provisions of clause 2 of this Article the law made by Parliament, whether passed before or after the law made by the Legislature of such State or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. That being the case . . ."

THE HON. SRI B. GOPALA REDDI :—" That is not the case, Sir. It is only a draft constitution. We are also tabling amendments to that. I do not think the hon. Member is entitled to refer to the draft constitution."

MR. PRESIDENT :—" Of course the hon. Member is entitled to refer to it. But we do not know when the constitution will come into force. I do not think the Government are going to wait till then."

* SRI B. BHIMA RAO :—" In the Constituent Assembly if they can prevail upon them to come to a different conclusion it is all right. Even according to the existing law, section 107 of the Government of India Act, 1935, reads :

' *If any provision of a Provincial law is repugnant to any provision of a Dominion law which the Dominion Legislature is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the concurrent Legislative list, then, subject to the provisions of this section, the Dominion law whether passed before or after the Provincial*

law, or, as the case may be, the existing law shall prevail and the Provincial law shall, to the extent of the repugnancy, be void'."

MR. PRESIDENT :—" We have got power even to make certain Acts which may not be validated later. What I want to impress upon you is this. In this matter of legislation it does not say that you cannot legislate. You can legislate. All you should see is whether it is within the competence of the Legislature. It is a different matter altogether whether assent is given or not."

SRI B. BHIMA RAO :—" My submission is we have to take note of the existing law."

MR. PRESIDENT :—" I suppose the Government will do that."

SRI B. BHIMA RAO :—" The Legislature has to take note of this fact. We should not pass such legislation if it is repugnant. I shall place one instance before you. I do not want to take much of the time of the House."

MR. PRESIDENT :—" There is no time-limit; the hon. Member can speak."

SRI B. BHIMA RAO :—" You may remember, Sir, in September 1946 in this House the Hon. Mr. Giri brought a Bill to amend the Trade Disputes Act. I raised a similar objection. You ruled that it was in order. After we all debated upon the measure it went up for receiving the assent of the Governor-General. There the Governor-General withheld his assent and that Bill was never passed into law. I only want that such a contingency should not recur."

MR. PRESIDENT :—" It was on the ground that they were enacting a similar legislation. They were re-enacting it."

SRI B. BHIMA RAO :—" They were re-enacting certain provisions. In that interval the Madras Legislature wanted to enact some other law and it was passed by both the Houses and when it went for the assent of the Governor-General it was withheld. I only want that such a contingency should not happen with regard to this legislation. Also in the interests of the merchants dealing in tobacco who were harassed like anything between these two sets of taxation, as a matter of principle, I think this is not the opportune time for the Government to bring forward such a measure as this."

SRI R. SURYANARAYANA RAO :—" I do not think, Sir, the fears expressed by Mr. Bhima Rao are well founded. In fact this Province passed first the Tobacco Taxation Act. Then the Central Legislature passed their Act levying an excise duty. Because they wanted to levy the excise duty we put our Act in abeyance."

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THE HON. SRI B. GOPALA REDDI :—" After negotiating with them we got Rs. 22 lakhs."

SRI R. SURYANARAYANA RAO :—" We are perfectly entitled to renew the Act of 1939. Mr. Bhima Rao quoted the instance of the Trade Disputes Act, Sir. There was first a Trade Disputes Act enacted by the Central Legislature and we wanted to interfere with it and they said : We are passing another Act. Do not interfere. Here we have a prior claim for imposing taxation on tobacco."

DR. V. K. JOHN :—" I take this opportunity, Sir, to bring to the notice of the Central Government the very widespread feeling in this Province that our sources of revenue are not elastic and that it is necessary that this Province, if it is to function properly, must have elastic sources of revenue or a due share in the elastic sources of revenue collected by the Central Government. This Bill is therefore welcome because the Central Government has from time to time failed to assure the public in this Province that we shall have elastic sources of revenue. At least this Act will open their eyes and will make them feel that it is not only the feeling among members of the Government and their supporters but also it is the feeling of everybody in the Province."

SRI B. NARAYANASWAMI NAYUDU :—" This Act also is like the previous one which was before the House, Sir. I am trying to understand, Sir, and I request the Hon. Minister to explain. whether it is the Act in the Annexure that is sought to be retained."

THE HON. SRI B. GOPALA REDDI :—" That will be kept under suspense."

SRI B. NARAYANASWAMI NAYUDU :—" What is it that they want? It is the Bill in the Annexure. Section 2 of the Bill says : The Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Act, 1940, is hereby re-enacted subject to the modification specified in sub-section (2). Therefore it is the Bill in the Annexure that is before the House in a round-about way. If I am wrong in saying so I wish to be corrected. Section 1 of the Bill 3 p.m. says : This Act may be called the Madras Tobacco Taxation of Sales and Licensing (Re-enacting) Act, 1948. Instead of putting the Act of 1940 before this House and ask this House to pass it, clause 2 of the Bill says that the Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Act, 1940, is hereby re-enacted. The Act of 1940 is given in the Annexure. I want to know why this round-about way of passing this Act. I am appealing again to the Ministers to let us have what may be called the Central sections and principles underlying those Acts. (Interruption by the Hon. Sri B. Gopala Reddi.) That is why I state that it is an attempt to pass the Act in the Annexure by enacting certain clauses in the main Act. All I submit is that the Act of licensing tobacco sales was passed in 1939, and an Act amending that was

passed in 1940. Now in 1948 we asked to re-enact the Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Act, 1940 with some modifications. This is not brought forward in the form of a Bill. I ask the reason why. Why not Government give reasons for re-enacting it now? Are the Government going to put clause 1 of the Act of 1940 to vote now? You are only going to put all the clauses of the Act of 1940 to vote *en bloc*. That is, Sir, evading the powers of the Legislature. By saying that the Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Act, 1940 is hereby re-enacted, you are compelling me to vote for all the clauses *en bloc* or not to vote at all. There may be some sections in the Annexure which I may not like. But you compel me to vote *en bloc*. This is not the correct procedure. When Government want to re-enact an Act, they should bring forward a Bill before this House, and they should not say that a certain Act shall be re-enacted. It may look that I am supercritic, but really I think it is a question of principle. What is it that is before the House now? Is it clause 4 of the Act of 1940 or the whole Act itself? I cannot understand how this was suggested to Government. The proper method will be to bring the Annexure before the House and not this Act."

THE HON. SRI B. GOPALA REDDI :—" Sir, this is one of the sins of the Advisers' regime. The net effect of the Bill is to revive the Act and keep it in suspense. There will be nothing in operation. It is only to enable the Government to enforce it as and when they desire to do so. It may be after 2 years or 5 years or it may be that there is no need at all to enforce it. I say this with reference to the objection of the hon. Mr. Narayanaswami Nayudu. (Interruption by Mr. Narayanaswami Nayudu The hon. Member Mr. Bhima Rao has raised the bogey of section 107 of the Government of India Act saying that this Bill is repugnant to the Dominion law. Under the Concurrent List, Sir, we are entitled to tax the sale of goods and advertisements. We come under that provision. The Government of India comes under the provisions of levying excise duties. There is no conflict with the Central Government's excise duties. The Government of India did not think that our law, which was in force in 1939, was repugnant. On the other hand they came to us and persuaded the Advisers to enter into a sort of agreement and accept 22 lakhs of rupees and be satisfied with it. That was in 1942. I am not satisfied with these 22 lakhs when they are collecting 300 lakhs from this Province. I wanted fifty per cent of it. I am reinforced in my claim by the very favourable recommendations of the Sarker Committee, which was appointed by the Constituent Assembly of India to go into the question of allocation of finances between the Central Government and the Provincial Governments. They made a specific recommendation that with regard to Central excise duties on tobacco, the Provinces must be given 50 per cent. We are strengthened in our case by that report. All that I want is I must

be able to negotiate with the Government of India to either increase these 22 lakhs to fifty per cent of their collections or the Government of India must allow me to maintain the *status quo*. I am keeping the whole Act in suspense. It is only to enable me to negotiate with the Government of India in a better manner that this Bill is brought forward. Even though the Central Government is run by our own leaders like Pandit Jawaharlal Nehru, I want my Province to get its legitimate dues. It does not satisfy me because my leaders are at the Centre that my Province should be poor for all time to come. This Bill will enable the Provincial Government to negotiate successfully with the Central Government. If the negotiations should for some reason or other fail, I will be entitled to levy my own duties. Let the Central excise duties also be there. Let the tobacco traders pay both the taxes. It is not uncommon that both taxes are paid. In the United States of America, both the Centre and the States levy their taxes, and they are paid by the traders.''

MR. PRESIDENT :—'' Does this Bill require the assent of the Governor-General? ''

THE HON. SRI B. GOPALA REDDI :—'' His Excellency the Governor's permission is necessary, and I think it has already been sent to you. There is nothing unusual about this. The original Act of 1939 was passed by the Legislature. The amending Act was passed in 1940, during the Advisers' regime. This amending Act was repealed in 1944. Now in 1948 we are repealing that repealing Act of 1944 and are reviving the 1939 Act as amended by the Act of 1940. We are re-enacting the amendments of the Advisers' Act of 1940 in the 1939 Act. The negotiations are still going on. We are keeping this Act in suspense. There is nothing repugnant to the Dominion law mentioned in section 107 of the Government of India Act.'' (Interruption by Mr. Narayanaswami Nayudu.)

MR. PRESIDENT :—'' The hon. Member Mr. Narayanaswami Nayudu may give notice of amendments. This deals with only one Bill.''

MR. PRESIDENT :—'' The question is—

> ' *that the Madras Tobacco Taxation of Sales and Licensing (Re-enacting) Bill,* 1948 (*L.A. Bill No.* 12 *of* 1948) *as passed by the Legislative Assembly be taken into consideration at once* '.''

The motion was put and carried.

Clauses 2 to 5, 1 and the preamble were separately put and carried.

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THE HON. SRI B. GOPALA REDDI :—" Sir, I move—

' *that the Bill be passed into law* '."

SRI B. NARAYANASWAMI NAYUDU :—" Sir, if people do realize what they are doing, then they would realize what they should not do. What is it that the House passed just now? It is that the Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Act of 1940 shall be re-enacted. What is that Act? It says—

' Any wholesale dealer who sells or buys tobacco leaf cured or uncured or any preparation or mixture of tobacco (not being manufactured tobacco) for trade therein :—

(a) if his turnover is estimated at less than one thousand rupees per annum,'

the fee shall be five rupees, ten rupees, twenty-five rupees and so on. While the Central Government is levying excise duties, if and when this Government also want to impose these taxes, they can do so. What is the purpose of re-enacting it? You are going to charge the brokers. No doubt we shall not put this Act into force. I ask whether we are passing an Act or we are passing a re-enactment. The Act is not put to the vote. Have the Government any idea of the taxation involved? Elementary principles of law should guide this House in passing Acts. The taxation proposals are not put to the vote of the House. But only the re-enactment is put to vote. I really regret how this could be conceived of. Instead of directly putting clause by clause, the re-enacting Bill is put to vote. I say it is not at all correct and it is not at all decorum for this House to re-enact an Act without specifying the Clauses of the Bill."

SRI M. NARAYANA MENON :—" Sir, I submit that in view of Clause 5 of the Bill, it is not necessary to put the Annexure to the Vote of the House or to put every section in the Annexure to the vote. Because, Clause 5 of the Bill says—

' The Madras Tobacco Taxation of Sales and Licensing (Repeal) and General Sales Tax (Amendment) Act, 1944, is hereby repealed, . . . '

3-15 p.m. It is repealed, what is the legal effect? If it repealed, naturally and automatically, the Madras Tobacco Taxation of Sales and Licensing Act of 1939 as amended by the Madras Act of 1940 will be revived. Therefore, when the Act of 1944 is repealed, the Act of 1939 as amended by the Act of 1940 is revived."

MR. PRESIDENT :—" Is it revived automatically? "

SRI M. NARAYANA MENON :—" It is automatically revived. In fact a re-enacting Act is not necessary; if the Act of 1944 is repealed, the other is revived. Therefore, I say even a re-enactment is unnecessary. It is only by way of caution Government are re-enacting it and there is no harm in re-enacting it. Under section 3 of this Act, it will be seen that the Annexure is not part of the Bill."

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MR. PRESIDENT :—" Why should not the Government put it in the form of a Bill? "

SRI M. NARAYANA MENON :—" That is another method. But there is no harm in the present method. Therefore when the Act of 1944 is repealed, the Act of 1939 as amended by the Act of 1940 is revived. As regards the other objection raised by Sri B. Bhima Rao and another hon. Member that under section 107 we ought not to have passed Acts like this, I may say this. At the time when the Act of 1939 was passed or when the Act of 1940 was passed, they obtained the necessary authority from the Governor-General and now, why should you require another permission from the Governor-General? It is absolutely not necessary. We are only reviving an Act which is dead because of another Act and we have got the authority to repeal an Act and therefore, there is no harm, if we do not get the permission of the Governor-General again in this matter. It cannot be said that if we do not get the permission, we are acting against the Central Government. There is no risk at all on the part of the Government in doing this. On the other hand, if the public find that they will be affected by the Act of 1939 now revived or re-enacted it is their duty to agitate and therefore there is absolutely no harm or risk in passing this Bill."

MR. PRESIDENT :—" The question is—

'that a Bill to re-enact the Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Act, 1940, and to repeal and re-enact with certain modifications, the Madras Tobacco Taxation of Sales and Licensing (Repeal) and General Sales Tax (Amendment) Act, 1944, be passed into law.' "

The motion was put and carried and the Bill was passed into law.

(4) THE MADRAS RESTRICTION OF HABITUAL OFFENDERS BILL, 1948 (L.A. BILL No. 13 OF 1948).

THE HON. SRI K. MADHAVA MENON :—" Mr. President, Sir, I move—

'that the Madras Restriction of Habitual Offenders Bill, 1948 (L.A. Bill No. 13 of 1948)[a] *as passed by the Legislative Assembly be taken into consideration.'*

I am sure that this Bill will not have the objections raised by Dr. John and Sri Narayanaswami Nayudu, that it is brought in as an Annexure or a Schedule. In this connexion, I would like to say only a few things.

" The Criminal Tribes Act, 1924, was intended to control members of criminal tribes both individually and collectively. This Act was amended in 1943 and again in 1945. The object of the amendments was to stiffen the original Act in certain respects.

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a Printed as Appendix IV on pages 204–210 infra.